



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

STEVEN H. HILFINGER
DIRECTOR

ENROLLED BILL ANALYSIS

BILL NUMBER: SB 193 (S-3).

TOPIC: CONSUMER FIREWORKS

SPONSOR: SEN. RICK JONES

CO-SPONSORS: Senators Booher, Proos, Bieda, Casperson, Gleason, Hansen, Hildenbrand, Hunter, Jansen, Marleau, Moolenaar, Richardville, and Whitmer.

COMMITTEE(S): Senate Regulatory Reform Committee; In the House the bill stayed on the House Floor and was not assigned to a committee in order to expedite its legislative approval.

DATE INTRODUCED: 2/22/11

DATE ENROLLED: 6/13/12

DATE OF ANALYSIS: 6/18/12

Analysis Done By: LARA, Office of Policy and Legislative Affairs

ADMINISTRATION POSITION: Support

PROBLEM/BACKGROUND

The Michigan Fireworks Safety Act (2011 PA 256) established a new comprehensive law regulating the sale, purchase, possession, and use of fireworks; provide civil and criminal penalties for violations of the act; impose various fees on wholesalers, distributors, and retailers; impose a five percent fee on the retail sale of fireworks; and establish a Fireworks Safety Fund. The new law represented an expansion of the fireworks that could be lawfully sold to consumers without a permit. The law established various penalties for violations of the law but only for initial violations. Second and subsequent offenses were not addressed.

DESCRIPTION OF BILL

The bill establishes a graduated scale of penalties for second or subsequent violations of the act, and modifies certain eligibility criteria for obtaining a consumer fireworks certificate.

The increased penalties for violations of the Act are as follows:

Selling Without a Consumer Fireworks Certificate: Under the act, individuals are prohibited from selling consumer fireworks without obtaining a consumer fireworks certificate. Currently, violators are subject to a \$5,000 fine for each day of violation, in addition to up to two years

imprisonment. The bill would increase the fine up to: \$5,000 for a first violation, \$20,000 for a second violation, and \$40,000 for a third or subsequent violation.

Issuance of Certificate: The Department of Licensing and Regulatory Affairs (LARA) cannot issue renewal certificates unless the applicant remits all of the fireworks safety fees required under the act in the preceding year. The bill clarifies that in addition to remitting the fireworks safety fees, the applicant must be *otherwise eligible to obtain a fireworks certificate*.

Remittance of Fireworks Safety Fee: The fireworks safety fee is a user fee collected on each retail transaction of consumer and low-impact fireworks. Individuals that fail to collect or remit the fee are currently subject to a fine of \$10,000. The bill increases the penalty to: \$10,000 for a 1st violation, \$20,000 for a 2nd violation, and \$40,000 for a 3rd or subsequent violation.

Consumer Fireworks and Minors: Under current law, selling to a minor is a state civil infraction and violators pay a civil fine up to \$500. The bill maintains the civil fine of \$500 for a first offense and adds a \$1,000 fine for a second or subsequent offense. The individual's consumer fireworks certificate would also be suspended for 90 days after the fine is ordered.

Issuance of Citation: The bill would allow the state fire marshal, or designee, to issue a citation up to 90 days after a completed inspection or investigation, if as a result of the investigation the fire marshal believes the person is in violation of the act, an order, or rules. Once a citation is issued, the fire marshal could immediately suspend the person's consumer fireworks certificate.

All of the following apply to the citation:

- It must be in writing and describe with particularity the nature of the violation.
- The citation must include:
 - The name and title of issuer.
 - The name and address of the person being cited.
 - The actions needed to bring the person into compliance.
 - A space for the person to sign indicating he or she received the citation.
 - A space where the person can accept the citation and agree to comply.
 - A notice that the citation must be accepted or rejected within 15 days.
 - A brief description of the administrative hearing process.

A person receiving a citation for a serious violation, an order, or rule promulgated under the act would be assessed a civil fine of up to \$1,000 for each violation. Citations for a violation that is not a serious violation could be assessed a civil fine of up to \$500. These fines would not apply to violations in the act that contain specific civil fines.

The State Fire Marshal could request a county prosecutor to issue a complaint and request a warrant of a person who commits a criminal violation under the act.

Ineligibility for and Revocation of Certificate: LARA could not issue a certificate to anyone that was (1) sentenced for a felony conviction within the previous five years, or to (2) a person that has ever been convicted of a felony involving theft, fraud, or arson.

Conviction of a crime that renders a person ineligible to receive a renewal certificate would also result in the person's current certificate being revoked for the balance of the year it was issued.

A person convicted of the following offenses would be ineligible for a certificate for the following periods of time after the conviction:

<u>Offense</u>	<u>Ineligibility Period</u>
Sale of consumer fireworks without certificate (second violation).....	5 years
Sale of consumer fireworks without certificate (third or subsequent violation).....	10 years
Failure to collect or remit fireworks safety fee.....	1 year
Failure to collect or remit fireworks safety fee (second violation).....	5 years
Failure to collect or remit fireworks safety fee (third or subsequent violation).....	10 years
Violation of Act causing damage to another person's property.....	1 year
Violation of Act causing serious impairment of a body function of another person.....	Permanent
Violation of Act causing the death of another person.....	Permanent

SUMMARY OF KEY ARGUMENTS

Pro

The bill provides enhanced penalties in the law in order to confirm the policy that repeat offenders are to be treated more harshly including the possibility of loss of licensure. Those who repeatedly break the law may lose the opportunity to continue to do business in Michigan.

Con

Some observers may argue that it would be better to increase penalties for fireworks violations by decriminalizing fireworks offenses in favor of civil penalties

FISCAL/ECONOMIC IMPACT

Include any revenue or budgetary implications in the bill to the department, state, or local government below.

(a) Department

Budgetary:

Revenue:

Comments: Fines levied on civil violations (i.e. selling consumer fireworks to a minor or persons receiving a citation for a serious or not serious violations) will be credited to the Fireworks Safety Fund which supports LARA's administration of the Bureau of Fire Services.

(b) State

Budgetary:

Revenue:

Comments: Would have a positive fiscal impact on the state to the extent the higher fines levied on criminal violation, civil infractions, and civil violations of the law result in higher revenues.

(c) Local Government

Budgetary:

Revenue:

Comments: Would have a positive fiscal impact on local governments because the fines levied on criminal violations are credited to support of local public libraries while the costs imposed are credited to the Justice System Fund.

OTHER STATE DEPARTMENTS

The Department of State Police will be directly impacted by the bill as more grades of firework become subject to seizure and confiscation under the new law.

ADMINISTRATIVE RULES IMPACT

The Department anticipates that several rule changes will be required to implement the bill. It is also likely that MAHS will consider certain rules changes regarding the processing of contested cases.